IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14061 of 2005
With
SPECIAL CIVIL APPLICATION No. 6958 of 2005
With
SPECIAL CIVIL APPLICATION No. 6977 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VERAVAL MERCANTILE CO OP. BANK LTD. THRO.NAGINBHAI DESAI - Petitioner(s)

Versus

RESERVE BANK OF INDIA & 5 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1,
MR AMAR N BHATT for Respondent(s) : 1,
Mr. Kamal B. Trivedi, Additional Advocate General for Respondent(s) : 2 - 4.
Mr. ND Nanavaty for NANAVATY ADVOCATES for Respondent(s) : 5 - 6.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 29/12/2005

ORAL JUDGMENT

As common question of law and facts arise in this group of petitions and they are interconnected,

the same are being disposed of by this common judgment and order.

2. A short but an interesting question of law arises in this group of petitions whether a Cooperative Bank is bound to give the benefit of One Time Settlement Scheme ('OTS Scheme') floated by the Reserve Bank of India (RBI) and/or bound by any direction issued by the Registrar, Cooperative Societies, State of Gujarat, directing the Cooperative Bank to give benefit of OTS Scheme to judgment debtor and/or to a person who has taken loan and/or financial assistance from a Cooperative Bank and there are dues of the Cooperative Bank, irrespective of the fact whether such a Cooperative Bank is in a position to recover the amount due to it from the said persons and/or out of securities or from guarantors and/or out of property of such guarantors, and/or whether it is mandatory for such Cooperative Bank to grant benefit of OTS Scheme irrespective of the fact whether such Cooperative Bank is in a position to recover the entire amount from the property of the customer/loanee who has taken a loan and/or from his guarantor.

3. So far as Special Civil Application No.14061 of 2005 is concerned, the same is filed by Veraval Mercantile Cooperative Bank Ltd (hereinafter referred to as “the Bank”) for an appropriate, writ, order or direction quashing and setting aside the order dated

30th October 2004 passed by the Registrar, Cooperative Societies, State of Gujarat in purported exercise of powers under Clause 7 of the Revised Guidelines for OTS of Non-Performing Assets of Primary (Urban) Cooperative Banks declared by RBI and by which the Registrar, Cooperative Societies, State of Gujarat, has granted permission/directed the petitioner to extend the benefit of OTS Scheme in favour of respondents No. 5 and 6.

4. So far as Special Civil Applications No. 6958 of 2005 and 6957 of 2005 are concerned, the same are filed by the judgment-debtors, i.e., respondents No. 5 and 6 of Special Civil Application No. 14061 of 2005 for an appropriate, writ, direction or order directing the Bank to grant the benefit of OTS Scheme as per the direction/decision of the Registrar, Cooperative Societies, State of Gujarat, dated 30th October 2004 which is impugned in the Special Civil Application No. 14061 of 2005.

4.1 The respective parties are referrred as per their position as per the committee of Special Civil Application No. 14061 of 2005. It is the case on behalf of the Bank that respondent No.5 was the Chairman of the Bank for last about 25 years and respondent No.6 remained Director of the Bank from 1997 to 1998. Thereafter in 1998, the respondent No.5 ceased to be Chairman of the Bank and the respondent No.6 also ceased to be Director of the Bank. It is the case on behalf of the Bank that RBI

is an authority authorized to carry out inspection of the petitioner Bank and accordingly periodical inspections have been carried out by the Inspection Teams of the RBI and from time to time various details were called for by the RBI, Urban Banks Department, and pursuant to the scrutiny made by the Urban Banks Department of the information sent by the Bank in a statement in Proforma 1 and 2 for the quarter ended on 30th June 1996 and 30th September 1996, it was found that all types of advances (Secured & Unsecured) granted to the then Chairman, Shri Rajnikant R. Shah (respondent No.5 herein)/his relatives and connected group which amounted to Rs. 252.36 lakhs as on 30th June 1996 and 30th September 1996 respectively were in excess of the maximum permissible limit of 50 per cent of the Bank's Capital Funds and the Bank was asked to recover the excess amount under advice to the RBI vide communication dated 30th November 1996. By communication dated 17th January 1997 from the Assistant General Manager, RBI. The Bank was directed to take necessary steps so as to regularize the position immediately and not later than 31st January 1997 in the matter of maximum limits of advances to Directors and their relatives. It is the case on behalf of the Bank that the aforesaid direction was in connection with the advances to the then Chairman, respondent No.5 together with Dahyalal Shah, former Director of the Bank. It is the case on behalf of the Bank that the respondents No. 5 and 6 taking advantage and benefit of their position as Chairman

and Director, not only exceeded the limits prescribed for maximum borrowings, but they have committed willful defaults in repayment of the principal and interest and according to the Bank their actions would amount to malfeasance inasmuch as more particularly in the case of respondent No.5 (the then Chairman) necessary documents, property papers, details thereof were not even filled-up at the time when these loans were applied for and sanctioned. Even thereafter also by letter dated 22nd October 1997 the Manager of the Bank was again intimated that the respondents No. 5 and 6 and 2 other Directors, namely Dahyalal Shah and A.R. Hemani had exceeded their limits sanctioned to them. It is the case on behalf of the Bank that thereafter there was inspection by the team of the Reserve Bank of India and the said inspection revealed that the Bank had sanctioned loans against security of plant and machinery in Real Estate in which the respondents No. 5 and 6 were interested and there were four such accounts where limits sanctioned were Rs. 15 lakhs, 20 lakhs, 15 lakhs and Rs. 40 lakhs respectively for total amount of Rs. 90 lakhs which was outstanding as on 31.12.1997 to the tune of Rs. 34.60 lakhs, 45.94 lakhs, 34.59 lakhs and Rs. 62.32 lakhs totalling to Rs. 177.45 lakhs. According to the Bank even with

regard to other accounts, following discrepancies were observed by the Inspecting Team of the RBI;

> “a. Proper scrutiny was not made before the sanctioning limits. Financial statements, income-tax returns and other related papers were not obtained with the application.
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> b. It was noticed during the course of inspection that the complete plant was shut down and machineries hypothecated to the bank, were found missing. The land mortgaged to the bank was divided into various plots and the Board Manoram Township was displayed on the site, office building and residential quarter.
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> c. Further, these accounts did not show any turnover as well as business transactions. Consequently, these accounts were overdue. End use of the advances granted, thus, was not verified by the bank, and it was clear that the funds were not utilized for the purpose for which facilities it was granted.
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> d. To regularize these overdue position of the above accounts, bank had renewed the limits from time to time.
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> e. Though repayment schedule was prepared in each of the accounts, bank had not ensured the prompt recovery of installments.
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> f. General Manager's specific recommendations on the loan application were not obtained.”

Even the Inspecting Team had also found so many serious irregularities with regard to other accounts also and as per the report the outstanding balance in all the accounts was Rs. 300.79 lakhs as on 31st December 1997. It is also the case of the petitioner

Bank that even in the year 1997 the District Registrar, Cooperative Societies issued a communication dated 28.2.1997 to the Bank calling upon the Bank to take action against those directors including respondents No. 5 and 6, the then Chairman and the Director on the ground that in view of the provisions of Section 32 of the Gujarat Cooperative Societies Rules, 1965, read with bye-laws they being in default and unauthorized arrears, they were not entitled to continue as Directors and the Bank was asked to call a meeting within 7 days and take steps to remove the said Directors including the former Chairman and former Director, i.e., respondents No. 5 and 6 herein from the Managing Committee. It is the case of the Bank that inspite of the aforesaid the respondents No. 5 and 6 continued to be Chairman and Director of the Bank and on account of such action the Bank had to face sudden rush for about 3 days of depositors seeking withdrawal of their monies which was on account of inspection report published in various local dailies. It is the case on behalf of the Bank that the Bank had filed suits for recovery of the amount due to the Bank against the respondents No. 5 and 6 and other group companies before the learned Board of Nominees and they obtained the decree against them against which appeals are filed before the Cooperative Tribunal, however no stay has been granted in the said appeals. So far as respondents No.6 is concerned, the appeals filed by them came to be dismissed. It appears that in the meantime the RBI issued a letter addressed to the

Chief Secretary of all the States proposing guidelines of dues relating to Non-Performing Assets of Primary Urban Cooperative Banks, popularly known as 'OTS Scheme' and according to the petitioner Bank the coverage of the said OTS scheme was not to cover cases of willful default, fraud and malfeasance and loans availed of and guaranteed by the Directors of respective cooperative institutions and as per the additional guidelines the cut-off limit was to be based on either loans outstanding or on Working Capital of the Bank or its deposits as on 31st March 2001; Non-Performing Assets were required to be classified as default or last assets as on 31st March 1998; the scheme was to remain in operation upto 31st June 2002; and applications received upto 31st June 2002 were required to be processed and decided at the earliest and not later than 30th September 2002. It appears from the record that on 28th June 2002 suits were already decreed and it is the case of the Bank that without prejudice the proposal was received by the Bank from the respondent No.5 for benefit of OTS Scheme and the said application/proposal was marked to the RBI also. It is the case of the Bank that none of the details as regards the discrepancies found in the inspection reports of the RBI was pointed out in the application which would classify the case of the respondent No.5 as being one of the cases of willful default, malfeasance and fraud and therefore the Manager, Urban Banks Department of the RBI who was sent copy of the proposal of the respondent No.5 without recording reasons, advised

the respondent No.5 to approach the Registrar, Cooperative Societies since the scheme as was announced was not applicable. It is the case of the petitioner Bank that taking advantage of that letter the respondent No.5 approached the Registrar, Cooperative Societies on 26th July 2002 and on 13.12.2002 another proposal without prejudice was received and the said proposal was followed by another proposal dated 7.1.2004. In the meantime, by letter/communication dated 21st March 2003 the Registrar, Cooperative Societies, State of Gujarat, informed all the Banks with regard to granting permission for acceptance of OTS guidelines of the RBI. It is the case of the Bank that even as per the said acceptance, the said OTS Scheme was not to be made applicable to the cases of willful default, fraud, malfeasance and loans availed of or guaranteed by directors or by close relatives of the directors or by firms/companies/institutions in which the directors are interested or by ex-directors of respective Urban Cooperative Banks. That thereafter the Bank sought clarification/opinion of the District Registrar, Cooperative Societies with regard to the application submitted by the respondent No.5 for granting benefit of OTS and the District Registrar, Cooperative Societies by letter dated 6.1.2003 clearly opined that so far as the accounts of the respondents No. 5 and 6 and other group companies benefit of the scheme should not be extended and accordingly the respondent No.5 was informed by letter dated 13.1.2003 that it was not possible to

agree to the proposal of OTS Scheme. It is the case of the Bank that even the Joint Registrar (Audit), Cooperative Societies also informed the District Registrar, Cooperative Societies vide communication dated 27/28th January 2003 pointing out that the benefit of OTS Scheme was not extendable to the loans availed of or guaranteed by the Directors or by their close relatives and other companies. It appears that thereafter the said scheme was extended vide communication dated 22nd April 2004 to 30th July 2004, and on 30th July 2004., i.e., on the last day, an application was given by the respondent No.5 to the Registrar, Cooperative Societies, and according to the Bank, respondent No.5 is highly influential with high political connections. It is the case of the Bank that though earlier the Registrar had clearly opined to the District Registrar as stated above that the benefit of OTS Scheme was not applicable in the cases like respondents No. 5 and 6, surprisingly by letter dated 13th September 2004, the General Manager of the Bank was called by the Registrar for discussions with necessary record on 20th September 2004 and the General Manager of the Bank being a subordinate officer remained present with the necessary records and it was pointed out that as per the user account as on 30th September 2004 amount of Rs. 8,89,51,008.83 ps., was due and outstanding in various 8 group companies and if calculated as per OTS Scheme the amount recoverable would be Rs. 4,49,81,221.83 ps., and thus the Bank would suffer loss by foregoing Rs. 4,39,00,000/-. It is the case

of the petitioner that thereafter nothing was done as the scheme was not applicable to the case of respondents No. 5 and 6 and other group companies. However, surprisingly by letter dated 29.10.2004 the Bank was informed that the Office of the Registrar had received applications for extension of benefit under the OTS from amongst respondents No. 5 and 6 and the Bank was called upon to furnish details and the said communication was sent by Fax, and as per the Bank undue haste was shown by calling for details presumably because the scheme was coming to an end on 31st October 2004 and according to the Bank the wordings of the said communication dated 29.10.2004 was indirectly directing the office bearers of the Bank to agree to what the Registrar was proposing to do, and thereafter the Bank was constrained to agree to extending the benefit of OTS Scheme to respondents No. 5 and 6 and other group companies by Registrar, Cooperative Societies and the Bank had no option but to send such letter which was provided along with the resolution. According to the petitioner Bank the resolution clearly pointed out that this was subject to the Bank's policy to implement the scheme in the manner which was applied to other such N.P.A. accounts, and the said communication was dated 30th October 2004 and on the same date, i.e., the date on which the Bank replied, the Registrar, Cooperative Societies, State of Gujarat in a hurry to pass orders in favour of the respondents No. 5 and 6 and other group of companies passed the impugned order dated 30th October 2004, without recording any reasons,

directing the Bank that the Registrar had granted sanction to extension of OTS Scheme to the respondents No. 5 and 6 and one another Dahyalal Shah who is also a former Director. It is required to be noted that '31st October 2004' was the last day for deciding the application of OTS Scheme and therefore every thing was concluded within two days, i.e., 29.10.2004 and 30-10-2004 and as per the Bank if the benefit of the OTS is extended to the respondents No. 5 and 6 and another there will be loss of more than Rs. 6 to 7 crores to the Bank as according to the Bank outstanding amount as per the judgment and award passed by the Board of Nominees and which is due and payable by the respondents No. 5 and 6 and another is Rs. 11,13,17,575 as on 30th September 2005 and against which if the benefit of the OTS Scheme is extended to the respondents No. 5 and 6 and one another, they are required to pay only Rs. 4,49,81,221.83 ps. Therefore being aggrieved and dissatisfied with the above communication/decision/order dated 30th October 2004 of the Registrar, Cooperative Societies extending the benefit of OTS Scheme to respondents No. 5 and 6 and one another and virtually directing the Bank to accept the same and extend the benefit of OTS Scheme to respondents No. 5 and 6 and another inspite of the judgment and decree in favour of the Bank and inspite of the fact that the Bank is in a position to recover the entire amount from the securities/guarantees/properties mortgaged with the Bank of the respondents No. 5 and 6 and another and their guarantors, the Bank has preferred the present

Special Civil Application under Article 226 of the Constitution of India.

5. Shri Harin P. Raval, learned advocate appearing on behalf of the petitioner has in support of his above submissions has submitted that OTS Scheme of RBI accepted by the State Government is not mandatory and in an appropriate case the Bank in the interests of the Bank as well as public at large may refuse to give benefit of OTS Scheme more particularly when it is found by the Bank that they are in a position to recover the amount. He has further submitted that the benefit of OTS Scheme is not applicable to the cases of respondents No. 5 and 6 and another inasmuch as the scheme is not made applicable to the cases of willful default, fraud and malfeasance and the loans availed of or guaranteed by the Directors or by close relatives of the Directors or by firms/companies/institutions in which the Directors are interested or by ex-Directors of respective Urban Cooperative Banks. It is submitted that the respondent No.5 was the Chairman at the relevant time and respondent No.6 was Director of the Bank and the Inspection Report of the RBI clearly suggests that the finance obtained by the respondents No. 5 and 6 and another group companies was by fraud and malfeasance and therefore the Registrar of Cooperative Societies has materially erred in accepting the proposal of the respondents No. 5 and 6 for OTS Scheme and thereby directing the petitioner to accept the same. It is also further submitted by

him that the Registrar has misinterpreted Clause 7 of the Revised Guidelines/OTS Scheme of Non-Performing Assets as made applicable to the Primary Urban Cooperative Banks inasmuch as Clause 7 confers powers upon Registrar to make deviation for any borrower, but this power cannot be so exercised so as to make scheme inapplicable to persons or borrowers for whom there is specific exclusion. He has further submitted that the decision of the Registrar of Cooperative Societies taken on the last date of closing of the OTS Scheme, i.e., on 30th October 2001 speaks volumes about malafide intention on the part of the Registrar, Cooperative Societies and the State Government as the decision came to be taken within the period of two days only, i.e., on 29.10.2004 and 30.10.2004 more particularly when earlier the District Registrar, Cooperative Societies and the Registrar, Cooperative Societies (Audit) had already taken a decision informing the petitioner that the cases of respondents No. 5 and 6 and another are not covered by OTS Scheme. He has further submitted that in fact there are already judgment and awards passed by the learned Board of Nominees against respondents No. 5 and 6 and another persons and in favour of petitioner Bank and even proceeding under Securitisation Act are already initiated against respondents No. 5 & 6 and at present properties worth more than Rs. 7 to 8 crores are under attachment of the petitioner Bank and therefore the petitioner is in a position to recover the entire amount and therefore it is requested to quash and set aside the

order passed by the Registrar, Cooperative Societies granting approval to extend the benefit of OTS Scheme and directing the petitioner to accept the same and allow the present Special Civil Applications as prayed for.

5.1. Shri Raval, learned advocate appearing on behalf of the petitioner has relied upon the unreported Judgment of this Court rendered in Special Civil Application No. 15530 of 2004 dated 8.4.2005 and Special Civil Application No. 16901 of 2004 dated 12.7.2005 as well as the judgment of the Karnataka High Court in the case of E. Sathyanarayanan Vs.Reserve Bank of India and Another, reported in 112 Company Cases Page 272 and the judgment of the Allahabad High Court in the case of Sardar Prem Singh Vs. Bank of Baroda, reported in 2004 (3) CCC 165 (All.) in support of his submission that guidelines of RBI for recovery of non-performing assets do not confer any right of a party to get one time settlement and the guidelines are purely administrative instructions. He has further submitted that this Court in aforesaid two Special Civil Applications has already taken a decision that it is not mandatory for the bank to grant and extent the benefit of one time settlement.

6. Shri Kamal B. Trivedi, learned Additional Advocate General appeared on behalf of Registrar, Cooperative Societies, State of Gujarat, Shri Amar

Bhatt, learned advocate appeared on behalf of the RBI, and Shri ND Nanavati, learned Senior Advocate appeared on behalf of respondents No. 5 and 6.

7. At the time of hearing of the present Special Civil Applications, Shri Kamal B. Trivedi, learned Additional Advocate General had made a statement before the Court that the direction issued by the Registrar, Cooperative Societies, State of Gujarat, extending the benefit of OTS Scheme in favour of respondents No. 5 and 6 and another and the direction directing the Bank to accept the OTS Scheme is not mandatory and is not binding upon the Bank, and it will be ultimately for the concerned Bank to take appropriate decision on the basis of such decision taken by the Registrar, in the interests of the Bank and public at large. In view of the above statement made by the learned Additional Advocate General, now the only issue which requires to be decided is whether the direction issued by the Registrar, Cooperative Societies with regard to the OTS Scheme is to be acted upon by the Bank or not, and the main controversy whether it is mandatory on the part of the concerned Bank to accept the same does not survive now and therefore it is held that the decision to accept the OTS Scheme of the Registrar, Cooperative Societies, State of Gujarat is not mandatory but directory in nature and it is not binding upon the concerned Bank; and looking to the circumstances and the availability of the properties and other avenues by which the concerned Bank is in a

position to recover the amount from the borrower, the Bank can refuse to accept the OTS Scheme in the larger interests of the Bank as well as public at large, as ultimately it is the Bank who has to take care of the interests of the Bank and security of the revenue of the Bank. This observation is made in view of the fact that there will be a vast difference between the actual amount due and payable and the payment to be made by the borrower on acceptance of One Time Settlement Scheme. Taking the case on hand, the dues of respondents No. 5 and 6 and another group of companies work out approximately to Rs. 11 crores, against which if the OTS Scheme is made applicable to respondent No.5 & 6 and another, they are required to pay approximately Rs. 4 to 5 Crores only. The Bank would therefore be losing approximately an amount of Rs. 6 Crores, and it is the case on behalf of the petitioner Bank that they are in a position to recover substantial amount if may not the entire amount and that they already got the property under attachment worth more than Rs. 7 to 8 Crores.

8. Shri Amar N. Bhatt, learned advocate appearing on behalf of the Reserve Bank of India, has relied upon the affidavit-in-reply filed by the R.B.I. He has further submitted that the decision in favour of the respondents No. 5 and 6 and another is in breach of Section 20-A of the Banking Regulation Act and the matter relating to grant of OTS in respect of Directors has to be considered in accordance with the permission of the Reserve Bank of

India. However, in the present case, the Registrar, Cooperative Societies has not taken prior approval of the RBI before making orders giving benefit of OTS to the erstwhile Directors of the Bank. He has further submitted that OTS guidelines of the Bank are non-discretionary in nature and does not permit OTS for Directors' debt without the Bank's permission and any settlement in favour of the Directors without Bank's permission will attract Section 20A of the Act. He has also made a similar statement like the one made by Shri Kamal B. Trivedi, learned Additional Advocate General that acceptance of OTS by the Bank is at the discretion of the Bank and considering the interests of the Bank, the Bank can take appropriate decision. He has further submitted that if ultimately it is found by the concerned Bank that they will be in a position to recover the amount from the debtor out of the properties available with them and/or out of any other properties, the Bank may refuse to give benefit of OTS Scheme.

9. Shri ND Nanavati, learned Senior Advocate appearing on behalf of the respondents No. 5 and 6 has fairly conceded that it is not mandatory for the Bank to accept the OTS Scheme. However, he has submitted that when the benefit of OTS Scheme is given to other persons the same be given to the respondents No. 5 and 6 also, and in the present case, the case of the petitioner Bank not to grant benefit of OTS Scheme in favour of respondents No. 5 and 6 is discriminatory and violative of Article 14

of the Constitution of India. He has further submitted that the petitioner Bank vide Circular/Resolution dated 29.10.2004 has already taken a decision to grant the benefit of OTS Scheme in favour of respondents No. 5 and 6 and therefore it is not open for the petitioner Bank now to contend that the benefit of OTS Scheme is not required to be given to respondents No. 5 and 6 and another. He has further submitted that the only objection raised by the RBI is that the benefit of OTS Scheme in favour of respondents No. 5 and 6 which is to be given to the Directors is without prior permission of the RBI. In that case, the Bank may approach the Reserve Bank of India for prior approval and thereafter let the RBI may take independent decision in accordance with law and on merits, and if the petitioner Bank is not ready and willing to approach the RBI, in that case the respondents No. 5 and 6 be permitted to approach the RBI and let the RBI to take a decision whether to extend the benefit of OTS Scheme in favour of respondents No. 5 and 6 or not. He has submitted on merits that as per the revised guidelines and in particular clause No.7, powers were given to the Registrar, Cooperative Societies to deviate from the Scheme and accordingly the Registrar, Cooperative Societies has taken the decision of extending the benefit of OTS Scheme in favour of respondents No. 5 and 6. It is therefore requested to dismiss the Special Civil Application filed by the Bank, i.e., Special Civil Application No. 14061 of 2005 and allow the Special Civil Applications No. 6958 of 2005 and

6977 of 2005 filed by petitioners, i.e., respondents No.5 and 6 of Special Civil Application No. 14061 of 2005 by directing the Bank to accept the order passed by the Registrar, Cooperative Societies and extend the benefit of OTS Scheme in favour of respondents No. 5 and 6.

10. Heard the learned advocates appearing on behalf of the parties. The respondent No.5 was the Chairman and respondent No.6 was the Director of the Bank at the relevant time. Respondent No.5 remained as Chairman of the Bank for the last about 25 years. It was recorded by the Assistant General Manager of Urban Banks Department of RBI in his communication dated 20th November 1996 which was issued on the basis of information sent by the petitioner Bank in a statement Proforma I and II for the quarter ended on 30th June 1996 and 30th September 1996 that all types of advances (secured and unsecured) granted to the Chairman, Shri R.R. Shah/his relatives and connected group which amounted to Rs. 259.96 lakhs/Rs. 265.32 lakhs were much in excess of maximum permissible limit of 50 per cent of the Bank's Capital Funds and therefore the Bank was advised to regularize the position forthwith in light of RBI directions and recover the excess amount outstanding/revise the sanctioned limits. Nothing was done by the Bank and the advice of the RBI was not complied with, naturally as at the relevant time respondent No.5 was the Chairman and respondent No.6 was the Director. By communication dated 17th January 1997 again the

Assistant General Manager of the Urban Banks Department, RBI, communicated to the Bank that it was observed that the Bank has not regularized the position and since the RBI directives are mandatory in character, it was advised to comply strictly with the same and to regularize its position immediately but not later than 1st January 1997 failing which the RBI will be constrained to view it seriously and initiate necessary action against the Bank. Thereafter, inspection was carried out by the RBI with regard to the advances to the Directors and their relatives on the basis of the Quarterly Statement in Proforma I and II for the quarter ended 30th June 1997 and very serious irregularities were found with regard to the advances to the respondents No. 5 and 6 and another and the group companies and the discrepancies observed in the Inspection Report are already referred hereinabove. Therefore, the same is not reproduced again. By communication dated 28.2.1997, the District Registrar, Cooperative Societies, Junagadh, addressed to the Bank calling upon the Bank to take action against those Directors on the ground they being in default and unauthorized arrears as they were not entitled to continue as Directors. The RBI again during inspection under Section 35 of the Banking Regulations Act, 1949, in the year 1999 by communication dated 15th May 1999 advised the Bank to furnish specific compliance and the Bank was specifically advised to clarify inter alia on the following points;

(1) as indicated under item 7 of the statement attached to your above letter, the Ex-Chairman Shri R.R. Shah had been issued legal notice on 25.7.1998 and also called to appear before the Board of Directors more than 3 times. Since the statement had indicated that property mortgaged by him to the bank would be disposed of and the dues will be recovered from him before end of March 1999, the latest position in this regard should be advised to us.
(2) under item 8 of the same statement, the position regarding sale of machineries hypothecated to the bank by Shri R.R. Shah and his division of factory land for plot-wise Sale or sale as a single piece of land have been highlighted. Recovery action taken by the bank in this case should be Explained to us in detail and if indispensable, criminal case Also should be filed against the borrower.

(3) The bank has indicated (under item 10 of the statement) That whole amount outstanding in each of the accounts Pertaining to Ex-Chairman where present position in this Regard should be advised to us.

(4) Progress regarding recovery of dues from intellec vision Pvt.Ltd. (ref.item 12 of the statement) in which case also the Ex-Chairman has taken the maximum benefit should be advised to us.

(5) whether any action could be contemplated against the general manager for not recording his specific recommendations in the loan applications pertaining to Shri R.R. Shah should be indicated (ref. Item 11

of the statement)

You may also furnish us the following particulars along with Your reply to the above points;

I. (A) date on which the present board of directors was elected.

(B) Names and address of the present board of Directors of the bank (including chairman).

II. Date on which Shri R.R. Shah had ceased to be (A) chairman of the Board and (B) one of the directors in the Board.

III. Whether his resignation from the Board was voluntary.

IV. Copy of statement 11 (Loans and advances to Directors and Their relatives) indicating the position for the quarter ended 31.3.1999."

In the Inspection Report dated 31.12.1999, the RBI has observed that the Bank has sanctioned Rs. 300.78 lakhs and outstanding as at 31.12.1999 was Rs. 253.71 lakhs and the RBI in its Report has specifically observed that "from the records relating to sanction/renewal it is clear that Shri R.R. Shah, ex-Chairman had exerted undue influence in getting the loan sanctioned/renewal despite the fact that some of the earlier loan accounts had been irregular/operation in the accounts were highly usual in factory. It appears from the record that in the meantime the Bank also filed Recovery Suits against the respondents No. 5 and 6 and other group companies

and judgment and awards are passed in favour of the Bank against the respondents No. 5, 6 and other group companies (Pages No. 87 to 337). It further appears from the record that by communication dated 31st October 2001 the RBI formulated approved guidelines for OTS of NPAs by Urban Cooperative Banks and in the said guidelines it is specifically stated that the following categories of loans will not be covered by OTS; cases of willful default, frauds and malfeasance and loans availed of or guaranteed by Directors or close relatives of Directors or by firms/companies/institutions in which the Directors are interested or by ex-Directors or respective Urban Cooperative Banks. It is required to be noted that in the said guidelines there was no provision for deviation by any authority. It appears from the record that in view of the said guidelines, respondents No. 5 and 6 applied to the Board of Directors of the Bank for grant of benefit of OTS Scheme vide proposal/application dated 20.6.2002 with a copy to the General Manager, RBI, and the RBI vide communication dated 13th July 2002 advised the petitioner to approach the Registrar, Cooperative Societies, Gandhinagar. It appears from the record that on 26.7.2002 the respondents No. 5 and 6 approached the Registrar of Cooperative Societies, Gujarat State, for OTS Scheme and in the meantime the suits came to be decreed in favour of the petitioner Bank some where in the month of September 2002 and the respondents No. 5 and 6 and other group companies approached the Gujarat State Cooperative Tribunal and

prayed for staying the judgment and award but the same has not been granted. It appears that thereafter on 30.12.2002 the respondents No. 5 and 6 again made an application for OTS Scheme without prejudice and vide communication dated 1.1.2003 the Bank sought advice of the District Registrar as to whether benefit of OTS can be given to the respondents No. 5 and 6 or not since they were Chairman and Director respectively and whether they would be covered by OTS Scheme having regard to the coverage. By communication dated 28.1.2003, the Registrar, Cooperative Societies informed the District Registrar, Cooperative Societies on the clarification sought that OTS Scheme is not applicable or it does not cover cases of the Chairman and Directors. The revised guidelines for OTS Scheme came to be published by the RBI vide communication dated 12th February 2003 and as per the revised guidelines also the cases of willful default, frauds and malfeasance and loans availed of or guaranteed by directors or close relatives of Directors or by firms/companies/institutions in which the Directors are interested or by ex-Directors or respective Urban Cooperative Banks were also not covered by the said scheme. As per the revised guidelines the last date for receipt of application was 30th April 2003 and processing of applications was to be completed by 31st October 2003. However, in Clause 7, it is so mentioned that any deviation from the above settlement guidelines for any borrower should be made only by Registrar of Cooperative Societies. It

appears that the State Government approved the said guidelines on 21.3.2003. It is the case of the petitioner that on 15.4.2003 a policy decision came to be taken by the petitioner Bank by passing Resolution No. 3/1. By communication dated 6.1.2003, the District Registrar, Cooperative Societies, Junagadh, informed the Bank that the scheme does not cover the Directors and the Chairman. Similarly, the Joint Registrar (Audit), Cooperative Societies also informed the Bank that the OTS Scheme will not be applicable and/or cover the cases of the loan taken by the Directors, their relatives etc. It appears from the record that the State Government extended the time limit for receipt of applications upto 31.7.2004 and the time limit to take a decision also came to be extended and the last date for taking the decision was 31.12.2004. The respondents No. 5 and 6 again applied to the Registrar, Cooperative Societies for benefit of OTS Scheme on 30th July 2004 (last date for submission of the application was 31.7.2004). On 13.9.2004, the Joint Registrar, Cooperative Societies called the Officer of the Bank for discussion on 20th September 2004 in the Chamber of Registrar, Cooperative Societies. By letter dated 29.10.2004, details were called for by the Registrar, Cooperative Societies and the said communication was sent by Fax on 30th October 2004. The Registrar, Cooperative Societies passed the impugned order/decision granting/extending benefit of OTS Scheme in favour of respondents No. 5 and 6 and a Circular/Resolution came to be passed by the Bank on

31.12.2004. Now, in view of the above facts and circumstances and by virtue of the statement made the learned Additional Advocate General on behalf of the Registrar, Cooperative Societies, State of Gujarat and Shri Amar Bhatt, the learned advocate appearing on behalf of RBI to the effect that it is not mandatory and/or compulsory on the part of the concerned Bank to grant benefit of OTS and/or the direction issued by the Registrar, Cooperative Societies to extend the benefit of OTS Scheme is not binding upon the concerned Bank, and it is ultimately for the concerned Bank to take an appropriate decision whether to extend the benefit of OTS Scheme or not, now the only thing which is required to be decided by this Court is whether the decision of the petitioner Bank not to extend the benefit of OTS Scheme in favour of respondents No. 5 and 6 and another group of companies is just and proper or not.

11. As stated above, in the Inspection Report, the RBI has specifically mentioned the irregularities and illegalities committed in sanctioning advances in favour of respondents No. 5 and 6 and group companies. From the Inspection Report it is crystal clear that the cases of respondents No. 5 and 6 and other group companies are of willful default, fraud and malfeasance and respondent No.5 being ex-Chairman and respondent No.6 being ex-Director, the OTS Scheme will not be applicable to their cases and therefore the decision of the Registrar, Cooperative Societies to extend the benefit of OTS Scheme in favour of

respondents No. 5 and 6 and other group companies is absolutely illegal, arbitrary and contrary to the OTS Scheme of the RBI as well as the State Government. It appears from the record that the Registrar, Cooperative Societies has taken disadvantage of Clause 7 of the revised guidelines to the effect that any deviation from the settlement guidelines for any borrower should be made only by the Registrar of Cooperative Societies. It is required to be noted that by such Clause the Registrar, Cooperative Societies is not authorized to make the scheme applicable though it is specifically made non-applicable and the deviation should not be made in such a way that it would ultimately change the entire guidelines. It is also required to be noted that even the RBI has also specifically held and so averred in the affidavit-in-reply that the decision of the Registrar, Cooperative Societies extending the benefit of OTS Scheme in favour of respondents No. 5 and 6 and other group companies is even contrary to Section 20-A of the Banking Regulation Act, 1949, and therefore also the impugned decision dated 30th October 2004 of the Registrar, Cooperative Societies is even contrary to the Banking Regulation Act. As stated above, as a statement is made that even the said decision is not binding upon the concerned Bank and it is ultimately for the concerned Bank to take appropriate decision, this Court is not passing any order dealing with the question whether the decision of the Registrar, Cooperative Societies granting benefit of OTS Scheme is mandatory and is binding

upon the Bank or not.

12. So far as the contention on behalf of respondents No. 5 and 6 that the decision of the petitioner Bank not to extend the benefit of OTS Scheme is discriminatory and violative of Article 14 of the Constitution of India is concerned. The same is not well-founded, firstly as per the guidelines the cases of the respondents No. 5 and 6 are not covered for benefit of OTS Scheme. Not only that, but considering the Inspection Report of RBI and considering the fact that there are judgments and awards passed against the respondents No. 5 and 6 and other group companies in favour of the petitioner Bank for the amount due and payable by them, and the contention on behalf of the petitioner Bank that they are in a position to recover substantial amount from the securities/properties mortgaged with them and the properties worth more than Rs. 7 to 8 Crores are already under attachment, and that the provisions of the Securitisation Act are already made applicable and only because of the stay order of this Court they are not in a position to recover the amount. From the above facts, it cannot be said that the guidelines framed by the RBI and duly approved by the State Government for grant of benefit of OTS Scheme and that the decision of the petitioner Bank not to extend the benefit of OTS Scheme in favour of respondents No. 5 and 6 and other group companies is in any way illegal. Though there are no specific

instances given by the respondents No. 5 and 6 to the effect that other similarly situated borrowers are granted benefit of OTS Scheme by the petitioner Bank, assuming that some benefits are wrongly given to some other borrowers, that does not mean that such illegal benefit should be given to the respondents No. 5 and 6 also. As held by the Hon'ble Supreme Court in catena of Judgments, more particularly in the case of Yogesh Kumar And Others Vs. Govt. Of NCT, Delhi And Others, reported in (2003) 3 SCC Page 548 and in the case of Union of India And Another Vs. International Trading Co. And Another, reported in (2003) 5 SCC Page 437, merely because some benefit is wrongly given and/or illegally given the same benefit is not required to be conferred upon other persons also and there cannot be a negative discrimination. Under the circumstances, the contention on behalf of the respondents No. 5 and 6, with regard to discriminatory treatment, has no substance and the same is rejected.

13. So far as the alternative submission made by the learned counsel appearing on behalf of respondents No. 5 and 6 in respect of approaching the RBI for permission under Section 20(A) of the Banking Regulation Act is concerned, it is required to be noted that first of all the Bank has to accept and agree to grant of benefit of OTS Scheme to the Chairman/Directors, and then and then only the Bank has to approach the RBI for prior approval. In the present case, there are justifiable reasons for the

Bank not to extend the benefit of OTS Scheme in favour of respondents No. 5 and 6. Therefore also, the alternative submission made on behalf of the respondents No. 5 and 6 cannot be accepted.

14. For the reasons stated hereinabove and in view of the statements made by the learned Additional Advocate General on behalf of the Registrar, Cooperative Societies and the learned counsel appearing on behalf of the RBI, it is held that a Cooperative Bank like the present petitioner is not bound to extend the benefit of OTS Scheme in favour of borrower/s except in an appropriate case if the Bank deems fit that it would be in the interests of the Bank and the public at large, and if the Bank is confident that the Bank will be in a position to recover an amount which may be substantially due and payable by a borrower out of properties/securities mortgaged with them of the principal debtors and/or guarantors, the Bank may not extend the OTS Scheme. It is therefore held that the direction of the Registrar, Cooperative Societies dated 30th October 2004 extending the benefit of the OTS Scheme in favour of respondents No. 5 and 6 is not binding upon the petitioner. It is further held, in the facts and circumstances of the case, that the decision of the respondent No.3, Registrar, Cooperative Societies, dated 30th October 2004, is illegal, arbitrary, and dehors the guidelines of the OTS Scheme and the same is hereby quashed and set aside. The Special Civil

Application No. 14061 of 2005 filed by the Bank is allowed. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs. Consequently, the cross petitions, being Special Civil Application No. 6958 of 2005 and Special Civil Application No. 6977 of 2005 are hereby dismissed. Rule is discharged. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.